

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.145 OF 1998

WITH

SPECIAL CIVIL APPLICATION NO.148 OF 1998

SHRI RAJNIKANT JETHALAL THAKKAR
VERSUS
GUJARAT ELECTRICITY BOARD, BARODA

Appearance: (In both Sp.Civil Applications.)

MR DS VASAVDA for Petitioner

CORAM: MR.JUSTICE S.K.KESHOTE
Date of Order:23/01/1998

C.A.V. ORDER

#. As both these petitions proceed on the same facts and grounds of challenge, the same are taken up for hearing together and are being disposed of by this common order. The facts of the case are taken from the Special Civil Application No.145 of 1998, with reference to which the learned counsel for the petitioner has made detailed arguments.

#. The petitioner was appointed as Junior Engineer on 4.9.70 by the respondent, Gujarat Electricity Board. On 29.1.72, the petitioner was promoted to the post of Deputy Engineer and further promotion was made to the post of Executive Engineer in the month of May 1986. It is the case of petitioner that on 8.11.83, he was granted the benefit of pay anomaly for the first time. Benefit of second pay anomaly was granted to the petitioner on 16.7.84. Thereafter the benefit of third and fourth pay anomaly was granted to the petitioner on 26th June 1997 and 18th December 1997 respectively. The Board under its communication dated 12th May 1997 called upon the petitioner to explain as to why the benefit of the fourth pay anomaly given to him should not be withdrawn and his pay should be refixed accordingly. The petitioner submitted a detailed reply to that letter cum show cause

notice of the Board and after considering the same, under the order dated 23rd December 1997, it has been ordered for cancellation of the benefits which have been given of the pay anomaly to the petitioner and his pay was refixed as detailed therein. It has further been ordered that if any excess amount is paid to the petitioner, recovery of the same will also be made. Hence this Special Civil Application.

#. From the communication cum show cause notice dated 12th May 1997, it transpires that the Board was of the opinion that the benefit of the fourth pay anomaly which has been given to the petitioner as per G.S.O. No.298 and 290 was not in conformity with G.S.O. No.290. The learned counsel for the petitioner contended that the order dated 23rd December 1997 has been passed in violation of principles of natural justice and as such only on this ground, the same may be quashed and set aside. It has next been contended that the benefits which have been given to the petitioner of the pay anomaly are sought to be recalled and recovered after more than ten years and it could have been done only within a reasonable time. Lastly, the learned counsel for the petitioner contended that the order impugned do not contain any reasons. In support of the aforesaid contentions, the learned counsel for the petitioner placed reliance on the following decisions:

- (i) 1994 LAB I.C. 2493 (SC) -- Bhagwan Shukla v. Union of India.
- (ii) 1996(2) GLH 623 -- A.R.Pandya v. State of Gujarat & Anr.
- (iii) 1997(1) LLJ 216 -- E.S.I. Scheme v. Natvarlal Amrutlal Shah.

and lastly, decision of this Court, given in Special Civil Application No.7213 of 1997, decided on 19.12.97, in the case of Shambhubhai Manjibhai v. GEB, annexure 'F'.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Before passing the impugned order, it is not correct to say that the petitioner was not given any notice or opportunity of hearing. The order impugned in this Special Civil Application has been passed after giving the show cause notice to the petitioner. During the course of arguments, the learned counsel for the

petitioner has raised a further contention that the petitioner was not let to know by the Board on what grounds, the benefits earlier given to him are sought to be taken back, but that contention also is without any substance. If we go by the contents of the show cause notice dated 12th May 1997, it is clearly borne out that the benefits which have been given to the petitioner were stated to be "...not in conformity with the G.S.O.290...". The learned counsel for the petitioner is unable to satisfy this Court how the benefits given to the petitioner of the pay anomaly are in conformity with the G.S.O.290. Even the petitioner has not produced on record of this Special Civil Application, the G.S.O.290 and further at the cost of repetition, it is stated that the learned counsel for the petitioner is unable to satisfy this Court that as per the G.S.O.298 and G.S.O.290 the petitioner was entitled for the benefits of the pay anomaly. So if we go by the notice, it is clearly borne out that it is a case of some mistake which has been committed by the Board in giving the benefits of the pay anomaly to the petitioner. If it is a case of mistake, then I fail to see how the Board is lacking any competence or power or limitation is coming in its way to rectify that mistake. In case any mistake has been committed and the benefit for which the officer of the Board was not entitled has been given to him, the Board has all the competence to correct that mistake at any time and for which plea of limitation or delay or laches in taking of the action will not be available to the concerned officer. It is a public money with which the Board is dealing with and in case any of its officer has wrongly been given the benefit for which he was not entitled, then certainly the Board is within its competence to pass the order for withdrawal of those benefits. However, the delay in passing of the order may have some relevance in connection with the order made for recovery of the benefits which have been given to the petitioner.

#. The decisions on which reliance has been placed by the learned counsel for the petitioner is of little help in this case. Regarding the action to be taken within a reasonable time in the matter pertaining to the claim made by workman under section 33(c)(2) of the Industrial Disputes Act, and the law as laid down in connection with those proceedings, cannot be made applicable to the administrative actions, more so when it is a case where monetary benefits which have come from public money are being given erroneously to its officers by the Board. The learned counsel for the petitioner is unable to cite any authority which shows that such action has to be

taken within a reasonable time and in case that action has not been taken within reasonable time, the authority is estopped once for all to take back those benefits. The other cases on which reliance has been placed lays down that in case any order has been passed which results in civil consequences to an employee or officer, i.e. of reduction of pay scale or reduction of emoluments then such order has to be passed in conformity with the principles of natural justice. However, in the present case, as noticed earlier, the order impugned in this Special Civil Application has been passed after giving notice to the petitioner. The learned counsel for the petitioner, during the course of arguments, raised a further contention that the petitioner has not been given the personal hearing before passing the order dated 23rd December 1997. I fail to see any merits in this contention for the reason that in such matters, personal hearing is not required to be given. Moreover, in reply to the show cause notice, the petitioner has nowhere prayed for giving him personal hearing.

#. So far as the other contention that the order dated 23rd December 1997, is not a reasoned order is concerned, it is suffice to say that this contention is also without any substance in the present case as the benefits of the pay anomaly which have been given to the petitioner were found to be not in conformity with the provisions as contained in G.S.O. 290 and the petitioner is unable to satisfy this Court that he was entitled for those benefits as per the G.S.O. aforesaid. On going through the reply of the petitioner dated 16th June 1997, to the show cause notice, I do not find anything therein also from which it can be accepted that the benefits have been given to the petitioner of the pay anomaly could have been given to him under the G.S.O.298 or G.S.O.290. It is also not the case of the petitioner in the reply to the show cause notice that he has rightly been given the benefits of the pay anomaly. The petitioner has come up only with a case that once the Board has passed the order, it cannot go back and say that it is wrong. The grievance of the petitioner seems to be that the error, if any, committed by the Board, cannot be corrected from retrospective effect. So on merits, the petitioner is unable to satisfy this Court that the order dated 23rd December 1997 is incorrect.

#. However, the petitioner has enjoyed the benefits of pay anomaly for all these years and the petitioner cannot be solely or wholly held responsible for the same. He enjoyed those benefits under the orders of the Board itself and the Board has also felt not to take the action

in time. The petitioner has no case on merits and the order does not call for interference of this Court sitting under Article 227 of the Constitution of India. So far, the Board has not decided how much amount in excess has been paid to the petitioner which has to be recovered from him. This exercise has to be undertaken by the Board within one month from today and in case any amount is found which is paid to the petitioner in excess, then the petitioner has a right to make a representation to the Board for waiver of the recovery thereof in whole or in part and if such a representation is made by petitioner, then it shall be decided within a reasonable time, say within two months thereafter.

#. In the result, both these Special Civil Applications are dismissed summarily subject to the aforesaid directions.

(S.K.Keshote, J)

(sunil)